



Kansas Courts News Release

Office of Judicial Administration

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*Judge Anthony J.
Powell*



*Judge Thomas E.
Malone*



*Judge Lori
Bolton Fleming*

Kansas Court of Appeals to mark Constitution Day with session at Washburn University

TOPEKA — A three-judge panel of the Kansas Court of Appeals will hear six cases September 19 at Washburn University as part of the court's observance of Constitution Day.

The court will hear cases in two sessions beginning at 9 a.m. and at 1:30 p.m. in the Robinson

Courtroom at the Washburn University School of Law, 1700 S.W. College.

Judges Anthony J. Powell, Thomas E. Malone, and Lori A. Bolton Fleming comprise the panel. Powell is the presiding judge, and Bolton Fleming is a district judge from Crawford County joining the court for the hearings.

"I'm excited to return to my law school and give an opportunity for law students to see the court hear real cases," Powell said.

During the panel's sessions, attorneys for each side will have an opportunity to present arguments to the judges, and the judges will have a chance to ask questions. After the hearings, the court will take each case under consideration and will issue a written decision at a later date, usually within 60 days.

When the oral arguments are complete, the judges will be available to talk with students.

These hearings are part of Constitution Day observance activities at Washburn University, Friends University, and Kansas State University. Congress directed federally funded educational institutions to host educational events about the U.S. Constitution on or about September 17 each year. The Constitution was signed September 17, 1787, by a majority of delegates to the Constitutional Convention.

Following are summaries of the cases to be heard by the Court of Appeals panel:

9 a.m.

Appeal No. 116,425: *Matthew Jaeger v. State of Kansas*

Jaeger was convicted in 2009 of kidnapping, aggravated battery, and criminal threat for an attack on his former girlfriend while both were students at the University of Kansas. The convictions were affirmed on appeal. Jaeger then filed a motion alleging ineffective counsel because his attorney did not object to admission of the victim's videotaped statement; did not seek instructions on lesser offenses; did not present a defense of voluntary intoxication; and did not seek a change of venue in light of negative public comments in the newspaper. After granting an evidentiary hearing, the district court dismissed all of the claims. Jaeger then appealed.

Appeal No. 116,752: *Carolyn Kane and Peggy Locklin v. Keith Locklin, Individually and as Trustee of the John W. Locklin and Ruth A. Locklin Revocable Trust Agreement, and Allen Locklin*

John and Ruth Locklin created the John W. Locklin and Ruth A. Locklin Revocable Living Trust agreement. The original terms directed the trustee to divide the assets equally among the four Locklin children after the deaths of John and Ruth. Several years after Ruth's death, John attempted to amend the trust by changing how the assets would be distributed following his death. Under the amendment, the two Locklin sons were to receive all of the real and personal agricultural property, which comprised the majority of the trust assets. The two Locklin daughters sued. The district court granted the daughters' summary judgment motion and awarded damages because it found the trust was joint and contractual and, as a result, became irrevocable and unmodifiable after the death of Ruth. The two Locklin sons appealed.

Appeal No. 117,103: *HM of Topeka LLC a/k/a HM of Kansas LLC, a Kansas Limited Liability Company v. Indian Country Mini Mart, a Kansas General Partnership, Carla D. Nissen, and Roger Aldis*

In 2006 Indian Country Mini Mart Inc. agreed to sell Indian Country Mini Mart located in Holton to

HM of Topeka LLC. The sale never closed. HM of Topeka sued Indian Country Mini Mart for contract damages. After a previous appeal to this court regarding HM of Topeka's standing to sue for enforcement of the contract, the case was remanded to district court. The court ordered specific performance of the contract. Indian Country Mini Mart appealed.

1:30 p.m.

Appeal No. 115,032: *In the Matter of the Estate of George Wayne Probasco, deceased v. Jeffrey W. Probasco, Kristi A. Hellmuth, and Paula S. Freeman*

G. Wayne Probasco died June 14, 2013, leaving the bulk of his assets to the G. Wayne Probasco Trust dated December 10, 1998. His surviving spouse, Lou, and his three adult children entered into litigation as to the distribution of the estate and the reimbursement of certain expenses incurred by Lou on Wayne's behalf. The parties mediated their disputes and reached an agreement that was approved by district court. Lou then submitted a request to the trustee for additional monies, based on her belief that the trust contained assets from three brokerage accounts that qualified as residue meant to flow to her under terms of the agreement. Believing there was no residue in the accounts, the children filed a petition to enforce the agreement. The court found that the children were entitled to all of the assets contained in the three brokerage house accounts. Lou appealed.

Appeal No. 117,336: *Ayaan M. Kulmiye v. Tyson Fresh Meats Inc.*

Kulmiye was injured on August 26, 2013, while employed at Tyson. She continued to work until she was terminated on November 25, 2014, for fighting with an employee. The Division of Workers Compensation found Kulmiye suffered a 9 percent permanent partial physical impairment as a result of her injury and that she was terminated as a result of fighting. Kulmiye appealed, and the Workers Compensation Appeals Board found she was justifiably terminated. Kulmiye appealed, arguing that 1) she was wrongfully terminated, 2) she should have been found at 100 percent disability, and 3) the court erred when it considered hearsay statements.

Appeal No. 116,795: *SWKI-Seward West Central Inc. and SWKI-Stevens Southeast Inc. v. Kansas Corporation Commission (Anadarko Natural Gas Co., Intervenor)*

SWKI-Seward West Central and SWKI-Stevens Southeast filed a complaint with the KCC alleging they were charged an unlawful rate for natural gas and gas transportation by Anadarko Natural Gas and related entities, based on their claim that two gas sales agreements between the companies had not been filed for approval with KCC. Anadarko filed a motion to dismiss the complaint and to approve a settlement agreement for civil fines imposed by KCC for violating various regulatory statutes. KCC granted the motion. KCC denied the SWKI companies' petition for reconsideration. The companies then filed a petition for judicial review in Stevens County District Court, which transferred the action to Shawnee County District Court. The court denied the petition for review. The SWKI companies appealed.



The Kansas Court of Appeals is celebrating its 40th anniversary this year. It was established in 1977 to provide a resource for more accessible, speedier, and less costly appellate review for Kansas litigants. With 14 judges sitting monthly in panels of three, the court is able to decide more than 1,800 appeals every year. Chief Judge Karen Arnold-Burger said, "We continue to achieve goals the Legislature set for us in 1977. We've heard cases in every judicial district statewide and we remain a traveling court. We often hold sessions in local schools and courthouses to increase public accessibility. And, we are particularly proud that we routinely issue decisions within 60 days of oral argument."

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